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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1644

DAVID ARENDS,

Petitioner,

—against—

EDWINA ARENDS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-.....

DAVID ARENDS,

Petitioner,

—against—

EDWINA ARENDS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

The Petitioner, David Arends, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Utah entered on January 2, 1974.

Opinions Below

The opinion of the Supreme Court of Utah is reported at 517 P.2d 1019. It is set out in the Appendix, *infra,* p. A-1. The Third Judicial District Court of Salt Lake County wrote no opinion. Its Findings of Fact and Conclusions of Law entered on May 10, 1973 are set out in the Appendix, *infra,* p. A-4.

Jurisdiction

The judgment of the Supreme Court of Utah was entered on January 2, 1974. On March 19, 1974 Mr. Justice White

entered an order extending the time to file this petition for certiorari to and including May 2, 1974. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C., Section 1257(3).

Question Presented

Whether Utah Code § 30-3-10 which provides for a sex-based presumption in favor of the mother in a custody contest, on its face and as applied in this case, violates petitioner's due process and equal protection rights and the due process rights of his child?

Statute Involved

Utah Code Ann.

Chapter 3—Divorce

§ *30-3-10. Custody of children in case of separation.* In any case of separation of husband and wife having minor children, or whenever a marriage is declared void or dissolved the court shall make such order for the future care and custody of the minor children as it may deem just and proper. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties and the natural presumption that the mother is best suited to care for young children. The court may inquire of the children and take into consideration the children's desires regarding the future custody; however such expressed desires shall not be controlling and the court may, nonetheless, determine the children's custody otherwise.

Statement of the Case

Petitioner and respondent were married in April, 1969 and a child of the marriage was born in January, 1970. The parties separated in May, 1971, and the petitioner-father assumed care and custody of the child, Kimberly.

The mother filed a petition for custody in the District Court of Salt Lake County, Utah which was denied on April 13, 1972. The parties were divorced on June 21, 1972, at which time custody was reviewed again and the child continued with the father. Subsequent to the divorce, the mother petitioned once more for custody of the child and a hearing on her petition was held in the Third Judicial District Court of Salt Lake County on April 11, 1973.

At the hearing the mother testified that after the birth of the child she had been depressed and ill and that Kimberly has been with her father "most of the time" (T. 6, 14).[1] The mother continued that she wants her child because "I just can't seem to function without her and I just feel that I need her and she needs me" (T. 9). She testified that to treat her depression she had been seeing a psychologist once a week and has had about 40 sessions with him.

The mother conceded that over the past 18 years she had had 10 or 15 different jobs. Presently she had three jobs; one full time secretarial position and two part-time jobs. She only had time to go home to sleep (T. 9, 17). If she gained custody, she would attempt to curtail the part-time

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[1] The symbol T refers to the transcript of the hearing of April 11, 1973.

work in order to care for Kimberly and an older child born of a previous common-law union, who has resided with the mother continuously (T. 11). Kimberly would be in school until 2 p.m. and she would be in a nursery about 20 blocks from home during the remaining morning and afternoon hours while the mother was working. Finally, the mother testified that during her marriage to petitioner she had lived in a mobile home but that she now has a three-bedroom brick home.

Dr. Dale Westwood, a clinical psychologist, testified that when he first began treating Mrs. Arends a year earlier she had been "quite paranoid, probably or nearly psychotic" and in "pretty severe condition emotionally." Her condition then was diagnosed as "borderline schizophrenic with a great deal of thought disturbance with some paranoid ideation" (T. 40, 42, 46-47). He stated that she had improved considerably with treatment and that she was not presently psychotic (T. 32-33). He thought she would profit from continued therapy and observed that she is still under stress and described her as compulsive and somewhat suspicious (T. 40, 42-43). He believed that she was capable of assuming custody of Kimberly and recommended that custody be transferred to her; that generally girls should be with their mothers. He had never had any contact whatever with the child or the father (T. 37-38).

Caroline Billows, a vocational counselor, had had about five or six contacts with the mother and testified that the mother had improved considerably (T. 56-57). She recommended that the mother be awarded custody although she too had never seen the child or the father. Ms. Billows conceded she had no opinion regarding the effect upon the child of removal from the father; that she had no experience

of that nature and could not judge the potential impact upon the child (T. 58-60).

David Arends, the father-petitioner, testified that even before the parties had separated he had assumed primary responsibility for the child; that he had worked a night shift at that time and had taken exclusive care of the baby during the day while the mother worked. Also, the mother had been mentally ill. He fed and changed the baby and the baby had slept in his room (T. 65-66).

Subsequent to his separation from the mother, he has been living with the child in a two bedroom mobile home in Montana. The mother has visited about once a month (T. 64).

He works from 7 a.m. until 3:30 p.m. During those hours a middle-aged woman who is a professional nurse comes to the home to care for Kimberly. Mr. Arends devotes his evenings and weekends to the child. He and the child visit extensively with both the maternal and paternal grandparents, who live nearby (T. 66-69).

Two other witnesses on behalf of the father, a judge of the District Court who had heard the previous petition for custody, and a court bailiff, both stated that at previous hearings the mother resisted the child's attempts to talk to her (T. 50-53, 62).

The trial court entered an order modifying the decree of divorce to transfer custody from the father to the mother. The court rested this order on written findings *inter alia,* that the father "is still competent to care for said child and has adequate living facilities, etc., for the care of said child" and that the mother is "now competent,

capable, and able to care for the child . . . [and is] not now incompetent nor unfit." Appendix, *infra*, p. A-5. Finally, the court concluded that "Plaintiff is the mother of the child and pursuant to Utah cases and Utah Code Annotated, 30-3-10, is entitled to the custody of said child." Appendix, *infra*, p. A-7.

In the Supreme Court of Utah the father argued that the maternal presumption contained in Utah Code Ann. § 30-3-10 violated the Fourteenth Amendment to the United States Constitution in that it authorizes a custody award based upon a sex-role presumption which is irrational and invidious and which as applied to his child failed to account for the child's best interest. On January 2, 1974 the Utah Supreme Court affirmed, expressly rejecting the constitutional claim and observing that the father's "contention might have some merit to it in a proper case if the father was equally gifted in lactation as is the mother." The Court also held that section 30-3-10 applied only to "cases of separation and when the marriage is declared void or dissolved" but not to divorce proceedings.

Reasons for Granting the Writ

From birth, the child who is the subject of this contest between divorced parents and who is now four years old, had been in the primary care of her father. She had been in his exclusive custody from the age of one and one-half because of the mother's severe mental illness. When the child was three and one-half years old the State of Utah precipitously removed her from the petitioner-father and awarded her to the respondent-mother solely on the strength of Utah Code Ann. § 30-3-10 which provides:

> in determining custody, the court shall consider the best interest of the child . . . and the natural presumption that the mother is best suited to the care of young children.

The Utah Code on its face and as applied to this case violates both the due process and equal protection rights of the petitioner-father and the due process rights of the child.[2] It authorizes a custody award on the strength of an invidious statutory presumption against the male parent without any evidence of or regard for the needs of the child.

The sex based presumption against the male parent contained in section 30-3-10 of the Utah Code is precisely the kind of invidious sex discrimination which this Court rejected under the Equal Protection Clause in *Reed* v. *Reed,* 404 U.S. 71 (1971) and *Frontiero* v. *Richardson,* 411 U.S. 677 (1973). Moreover, as applied to this case, the statute establishes an irrational and apparently irrebuttable presumption which this Court held to be in violation of due process of law in *Stanley* v. *Illinois,* 405 U.S. 645 (1972) and *Cleveland Board of Education* v. *LaFleur,* —— U.S. ——, 39 L.Ed.2d 52 (1974).

In *Reed,* the Court invalidated an Idaho statute that preferred men over women for appointment as estate administrators. The statutory preference was based on the stereotypical assumption that men have more business experi-

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[2] The petitioner-father clearly has standing to assert the rights of his child, whose interest is profoundly affected by the issues raised and whose only reasonable forum to assert her rights is the forum of her parents. *Eisenstadt* v. *Baird,* 405 U.S. 438, 444-446 (1972); *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); Sedler, *Standing to Assert Constitutional Jus Tertii in the Supreme Court,* 71 YALE L.J. 631 (1962).

ence than women. *Reed* v. *Reed,* 93 Idaho 511, 514, 465 P.2d 635, 638 (1970). Rejecting sex-role generalizations as a predicate for legislative distinctions, the Court ruled that the equal protection of the laws forbids disparate treatment of similarly situated men and women.

Section 30-3-10 of the Utah Code is based upon the stereotypical generalization that women are better qualified to be parents to young children than are men. As the *Reed* statute discriminated against the more-qualified woman in favor of the less-qualified man, so this statute discriminates against the more-qualified man in favor of the less qualified woman. For, as the present case demonstrates, as long as a woman can show she is not actually unfit, or indeed is no longer unfit, she automatically "pursuant to Utah cases and Utah Code Annotated, 30-3-10, is entitled to custody." Appendix, *infra,* p. A-7. The fact that the father may be better suited as a parent and has demonstrated his nurturing ability by caring for his child from birth, is insufficient to place him on equal footing with the mother.

In *Frontiero,* the statutory presumption that the husband is the breadwinner and the wife the dependent, served to award government benefits to wives who might not in fact be dependent and to deny them to husbands who *are* financially dependent on their wives. Rejecting the disparity of treatment, the Court held that legislative classifications may not be premised on sex-role stereotypes or unalterable sex characteristics that bear no necessary relationship to an individual's ability or life situation. Utah Code, § 30-3-10 is in greater need of correction by this Court than the scheme in *Frontiero,* since it is not merely family finances which are dictated by arbitrary sex-role classifications, but the life of a young child.

The case which best demonstrates the unconstitutionality of the Utah Code is *Stanley* v. *Illinois, supra.* There the Court emphasized the fundamental unfairness of applying sex stereotypes to men which discredit their parental abilities. In *Stanley* the Court held that the Due Process Clause was violated by a statutory presumption which placed more onerous burdens upon unmarried fathers who sought custody of their children than it did upon unwed mothers and married parents. Acknowledging that most unmarried fathers, as the State contended, might be unsuitable parents, this was not true of *all* unmarried fathers. 405 U.S. at 654.

Likewise, although it may be true that most women are better suited to the care of young children than most men, this is not invariably so. The Utah Code rests on the irrational presumption that it *is* invariably true, inasmuch as it was applied in this case to transfer custody from a fit father who had cared for the child from birth to a formerly unfit mother. Like the discredited *Stanley* statute, it places upon fathers seeking custody a much more onerous burden (proof of the mother's unfitness) than it places upon the mother. The father's right to a hearing required by *Stanley,* moreover, is meaningless if an irrational presumption applied at the hearing virtually precludes him from prevailing.

Finally, in *Cleveland Board of Education* v. *LaFleur, supra,* this Court struck down, again under the Due Process Clause, mandatory leave and return provisions for public school teachers. The provisions were based upon presumptions of physical unfitness which failed to allow for an individualized consideration of each pregnant teacher's health. The maternal presumption of § 30-3-10 is equally

irrational for it fails, as this case demonstrates, to account for the individualized needs and lifestyles of divorced parents and their children.

Utah's disposition of this child's custody on the basis of a presumption having no relation to *her* individual condition deprived the child as well as the father of due process of law. The child, perhaps more than the parent, is entitled to a custody determination free of irrational presumptions. For the Utah Code, as in this case, invariably places the child with the mother as long as the mother is not proven to be unfit, without regard for whether the child would fare better with her father.

Disregard of the child's interest in this case is underscored by the State's failure to require any evidence whatever of her health, her emotional state and development or to consider the traumatic effect upon her of separation from her father, who had been the primary nurturing parent. Nor did the court consider her need for parental continuity, which child development experts with striking unanimity deem crucial to normal child development. See Joseph Goldstein, Anna Freud, Albert Solnit, BEYOND THE BEST INTEREST OF THE CHILD (Macmillan, 1973).

This Court has affirmed in a variety of contexts that children are protected by the Bill of Rights. When they face a loss of liberty as a consequence of a delinquency charge they must be accorded due process of law. *In re Gault,* 387 U.S. 1 (1967); *In re Winship,* 397 U.S. 358 (1970). They also enjoy the rights and privileges of the First Amendment. *Tinker* v. *Des Moines School Board,* 393 U.S. 503 (1968). And they are entitled to financial benefits from their fathers without regard to their illegitimacy under the Equal Protection Clause. *Gomez* v. *Perez,*

409 U.S. 535 (1973); *Weber*, v. *Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Levy* v. *Louisiana*, 391 U.S. 68 (1968).

This Court has also recognized the constitutional right of a child to family relationships which will best promote the child's individual development, health and welfare. See *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923); see also *Stanley* v. *Illinois*, *supra*; *May* v. *Anderson*, 345 U.S. 528 (1953). This case presents an ideal vehicle for recognizing the critical need of a young child to an independent consideration of her own interests in a custody dispute, free from a presumption which has no bearing on her individual circumstance.

Utah is the only jurisdiction in the Nation which continues to authorize a sex-based presumption in custody contests.[3]

The combined wisdom of all of the other states is that a child's best interest is served by custody to the parent most able to meet the particular child's needs, without regard to the parent's sex. Indeed, eleven jurisdictions expressly provide that the sex of the parent shall not be a factor in determining custody.[4]

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[3] Louisiana provides for custody to the parent obtaining the divorce but does have a presumption in favor of the mother during the pendency of the divorce proceedings. La. Stat. Ann., Civil Code §§ 146, 157 (Supp. 1974). It is the only state which does so.

[4] Alaska [Alas. Stat. § 09.55.205 (Supp. 1973)]; Florida [Fla. Stat. Ann. § 61:13 (Supp. 1973)]; Indiana [Ind. Code § 31-1-11.5-21 (Supp. 1973)]; Massachusetts [Ann. Laws Mass. 208 § 31 (1969)]; Minnesota [Minn. Stat. Ann. § 518.17 (Supp. 1974)]; Nebraska [Rev. Stat. Neb. § 42-310-311 (Supp. 1971)]; New York [N.Y. Cons. Laws, Dom. Rel. L. § 240 (1964)]; Ohio [Baldwin's Ohio Rev. Code § 3109.03-.04 (1973)]; Oregon [Ore. Rev. Stat. § 107.105 (1971)]; South Carolina [Code of Laws of S.C. § 31-51 (1962)]; Wisconsin [Wis. Stat. Ann. § 247.24 (Supp. 1973)].

All of the other state statutes are silent on the matter, relying for the most part on a provision that the child's best interest shall govern.[5] Some states provide criteria for determining that best interest,[6] and in none is sex of the parent deemed relevant. Only in Utah has the Legislature deemed an individualized demonstration of the child's interest less important than discredited sex role stereotypes.

The effort of the Utah Supreme Court to construe the maternal presumption out of the trial court's decision is unavailing. First, the trial court expressly relied upon section 30-3-10. App., *infra*, p. A-7. Had the appellate court remanded the matter for a hearing free from consideration of the provision, its contention that § 30-3-10 applies only to "cases of separation and when the marriage is declared void or dissolved," but not to divorce proceedings [App., *infra*, p. A-2], might have some merit. It did not choose that course, however. The Utah Supreme Court affirmed the judgment, purportedly on the basis of evidence regarding the child's welfare. In effect, it ruled that the trial court's application of § 30-3-10 was harmless error. The affirmance on that ground, however, is unsupported by the record because there was no evidence whatever of the child's condition, needs or welfare.

The only evidence before the trial court was the testimony of the mother's psychologist that she was no longer psychotic and that of a social worker who agreed with the psychologist that she was no longer unfit to raise the child.

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[5] E.g. Ariz. Rev. Stat. § 25-332 (Supp. 1973); Ill. Ann. Stat. 40 §§ 14, 19 (Supp. 1973); Ann. Code Md. 16 § 28 (1973); Mich. Stat. Ann. § 25.312 (Supp. 1973).

[6] See Ariz. Rev. Stat. § 25-332 (Supp. 1973); Ky. Rev. Stat. Ann. § 403.270 (Supp. 1973); Mich. Stat. Ann. § 25.312 (Supp. 1973).

Neither had had any contact with the child or the father. The court also heard testimony from both parents and found that the father continued to be a fit parent and that the mother was no longer unfit. App., *infra,* pp. A-5, 7. That the unconstitutional presumption did not contribute to the verdict cannot be demonstrated beyond a reasonable doubt and the error, accordingly, is not harmless. *Chapman* v. *California,* 386 U.S. 18 (1967).

The Utah Supreme Court, moreover, exposes its endorsement of the maternal presumption not only by its gratuitous observations that men cannot lactate [App., *infra,* p. A-2] but by its consistent affirmance of custody judgments in the context of divorce proceedings based expressly upon the presumption that mothers are more suited to the care of young children than are fathers. *White* v. *White,* 29 Utah 2d 148, 506 P.2d 69; *Dearden* v. *Dearden,* 15 Utah 2d 105, 388 P.2d 230; *Baker* v. *Baker,* 25 Utah 2d 337, 481 P.2d 672. These cases, like the present case, involved divorce proceedings in which the mother was awarded custody on the strength of the presumption. Moreover, the Utah Supreme Court concedes that § 30-3-10 applies to proceedings in which "the marriage is . . . dissolved." An analysis of Utah law yields no distinction between such a proceeding and a divorce proceeding.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 1974

Opinion of the Supreme Court of the State of Utah

IN THE

SUPREME COURT
OF THE STATE OF UTAH

No. 13349

FILED
January 2, 1974

EDWINA ARENDS,

Plaintiff and Respondent,

—v.—

DAVID D. ARENDS,

Defendant and Appellant.

ELLETT, *Justice*:

The parties hereto were divorced on April 13, 1972, and the defendant was given the temporary custody of the minor child born during the marriage. At that time the plaintiff was not physically well and also had some emotional disturbance.

Mrs. Arends made several efforts to have the court award the care, custody, and control of the child to her permanently, the last effort resulting in such an order being made. Mr. Arends appeals from that order and claims that Section 30-3-10, U.C.A. 1953, as amended (1973 Pocket

Supplement), violates the equal protection clause of the State and Federal Constitutions. The wording of the statute which he claims violates his rights reads:

> . . . In determining custody, the court shall consider the best interests of the child . . . and the natural presumption that the mother is best suited to care for young childen . . .

The contention might have some merit to it in a proper case if the father was equally gifted in lactation as is the mother. However, the section does not even apply to divorce cases. It applies to cases of separation and when the marriage is declared void or dissolved.[1]

The statute[2] which applies to divorce cases reads:

> When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable; . . .

In divorce cases the welfare of the minor children is of paramount importance in determining custody. This court in the case of Sampsell v. Holt[3] said:

> Child custody proceedings are equitable in the highest degree, and this court has consistently held that the best interest and welfare of the minor child is the controlling factor in every case. . . .

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[1] Johnson v. Johnson, 7 Utah 2d 263, 323 P.2d 16 (1958); Sampsell v. Holt, 115 Utah 73, 202 P.2d 550 (1949).

[2] Sec. 30-3-5, U.C.A. 1953, as amended (1973 Pocket Supplement).

[3] 115 Utah 73, 80, 202 P.2d 550 (1959).

At the hearing from which this appeal was taken, the trial court heard evidence, and based thereon he determined that the mother was a fit and proper person to have the care, custody, and control of the minor child and that the welfare of the child would best be served in placing it with the mother.

We are unable to say that the judge abused his discretion in that regard, and the judgment is therefore affirmed. Costs are awarded to the respondent.

WE CONCUR:

E. R. CALLISTER, JR.,
Chief Justice.

F. HENRI HENRIOD,
Justice.

J. ALLAN CROCKETT,
Justice.

R. L. TUCKETT,
Justice.

Findings of Fact and Conclusions of Law of the Third Judicial District Court

IN THE

THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY

STATE OF UTAH

Civil No. D-4366

EDWENA ARENDS,

Plaintiff,

—VS.—

DAVID D. ARENDS,

Defendant.

Pursuant to the trial heid in this matter concerning a change of custody petition by the Plaintiff to change the custody of the child of the parties named Kimberly, age 3, the Court having taken testimony, having reviewed the file and all of the reports of the Conciliation Department of the Court and all other evidence and matters submitted to the Court, the Court hereby makes the following:

FINDINGS OF FACT

1. The parties in this action separated during the month of May, 1971, at which time the Defendant took the care of the minor child of the parties.

2. On the 13th day of April, 1972, said minor child was awarded by Judge Brown of this Court to the Defendant for temporary custody.

3. Plaintiff was granted the Decree of Divorce against the Defendant by Judge Brown on about June 21, 1972, who again ordered that Defendant could have temporary custody of the child.

4. That the matter of the temporary custody was reviewed by Judge Faux of this Court in November of 1972 and said child was ordered to remain with the Defendant.

5. Plaintiff filed a petition in February, 1973, for custody of said child.

6. The Defendant is still competent to care for said child and has adequate living facilities, etc., for the care of said child.

7. The Court in the hearing aforementioned on April 11, 1973, heard the following witnesses: Dr. Dale Westwood, Ph.D., Clinical Psychologist retained and hired by the Welfare Department of the State of Utah, Rehabilitation Department, to treat the rehabilitation and psychological needs of the Plaintiff, Mrs. Edwena Arends. Dr. Westwood began his weekly visits and treatments with the Plaintiff in August of 1972 and continued them on a weekly basis until the date of this aforementioned hearing.

8. Dr. Westwood testified that the Plaintiff had made "remarkable" improvement in her psychological makeup and in her ability. He also testified that in his opinion the Plaintiff was now competent, capable, and able to care for the child, Kimberly. He testified that in his opinion she was not now incompetent nor unfit. He further testified that her intelligence quota ratings had made a "dramatic" improvement since he began his treatments, to-wit: an im-

provement from approximately an overall intelligence quota of 104 to an overall intelligence quota of over 120. He further testified that this improvement came because originally when he began treating her she was mentally, emotionally, and physically upset, disturbed and had been sick physically. The foregoing opinions were substantiated by Carolyn Billows of the Department of Welfare, Rehabilitation Department.

9. The Court finds these opinions to be valid opinions and adopts them as opinion facts on which the Court will make its conclusions of law.

10. The Court finds that the Plaintiff has an adequate place of residence, to-wit: a three bedroom home on Jefferson Avenue in Salt Lake City which she just purchased which is enclosed by a chain-link fence, beneficial for keeping young children out of the street.

11. The Court further finds that the other child of the Plaintiff, Gina, is and will be a good companion for the minor child Kimberly.

12. That the Plaintiff has made proper arrangements for a nursery school during her working hours for Kimberly. Further, that she is able and capable of taking care of said child at all other times.

13. That the Plaintiff is in need of financial support for said child, and the Court finds that the sum of $125.00 is reasonable.

From the foregoing Findings of Fact the Court makes the following:

CONCLUSIONS OF LAW

1. No evidence has been produced to show that Defendant is incapable of caring for the minor child of the parties.

2. Plaintiff is the mother of the child and pursuant to Utah cases and Utah Code Annotated, 30-3-10, is entitled to the custody of said child.

3. Defendant must turn over the custody of said minor child to the Plaintiff.

4. That the Court further concludes that the Plaintiff should be and is now entitled to support for said minor child Kimberly in the sum of $125.00.

5. The Court concludes further that because of the respective time and involvement of the parties that they bear their own Court costs, attorney's fees, and other expenses.

6. That the Defendant is entitled to reasonable visitation rights at whatever times and places are convenience and compatable for the parties plus the Plaintiff is entitled to let the Defendant take the child over a reasonable period of time during the summer months of each year.

DATED this 10 day of May, 1973.

BY THE COURT:

JAMES S. SAWAYA
Judge

W. STERLING EVANS
Clerk

By (Signature Illegible)